

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

PHOENIX LIGHT SF DAC, BLUE HERON
FUNDING V LTD., BLUE HERON FUNDING VI
LTD., BLUE HERON FUNDING VII LTD., BLUE
HERON FUNDING IX LTD., C-BASS CBO XIV
LTD., C-BASS CBO XVII LTD., KLEROS
PREFERRED FUNDING V PLC, SILVER ELMS
CDO PLC and SILVER ELMS CDO II LIMITED,

Plaintiffs,

v.

DEUTSCHE BANK NATIONAL TRUST
COMPANY and DEUTSCHE BANK TRUST
COMPANY AMERICAS,

Defendants.

Case No. 14-cv-10103-JGK-DCF

Hon. John G. Koeltl

COMMERZBANK AG,

Plaintiff,

v.

DEUTSCHE BANK NATIONAL TRUST
COMPANY and DEUTSCHE BANK TRUST
COMPANY AMERICAS,

Defendants.

Case No. 15-cv-10031-JGK-DCF

Hon. John G. Koeltl

**PLAINTIFFS' RESPONSES TO DEFENDANTS' OBJECTIONS CITED IN
PLAINTIFFS' JOINT MOTION FOR PARTIAL SUMMARY JUDGMENT**

Plaintiffs submit this joint memorandum in response to Defendant's objections to evidence identified in Plaintiffs' joint motion for partial summary judgment.

I. Introduction

Plaintiffs' evidence proffered at this stage is admissible and/or its admissibility is anticipated in accordance with Rule 56 of Federal Rules of Civil Procedure ("FRCP"). *See* Rule 56 of Fed. R. Civ. P.; *Rodriguez v. Vill. Green Realty, Inc.*, 788 F.3d 31, 46 (2d Cir. 2015). As explained below, Plaintiffs' evidence is admissible under the Federal Rules of Evidence ("FRE"). Additionally, as set forth below, Defendants' objections are baseless, improper, and/or mischaracterize Plaintiffs' evidence.

Plaintiffs reserve the right to raise and seek a ruling from the Court that any objection made by the Defendants is improper, and should be overruled. Further, Plaintiffs do not waive any defense to any objection as to its evidence.

Ex. No.	Date	Description	Objection	Rebuttal
45	Undated	FRE 1006 Summary of Trusts	Improper 1006 summary; there is no evidence that several of the source documents have been produced or provided to defendant (“individual trade tickets and Plaintiffs’ internal records”). ¶ 47(b), Declaration of Jay S. Handlin in Support of Plaintiffs’ Joint Motion for Partial Summary Judgment (“Handlin Decl.”)	Because all cited evidence comes from readily available public documents, DB’s Rule 1006 objection fails. Rule 1005 permits use of contents of public documents, and those contents may be proved by means other than certified copies, so long as reliable. Rule 1006 permits uses of summaries insofar as the underlying documents are made available for examination.
378	1/18/2018	Deposition transcript of Ronaldo Reyes	Lacks foundation with respect to the following excerpts regarding Analytics and modeling of EODs: 98:15-19; 96:24-98:18.	These facts are founded on Reyes’ admitted personal knowledge, so DB’s foundation objection is without merit. Reyes testified as to both personal experience with, and a business understanding of, DB’s Analytics group and its reports: “[t]he analytics team produces what we refer to as a trigger report . . . [and] when the trigger report is produced, it’s the responsibility of the trust administration group to determine if any of those triggers are defined events of default and whether or not and event of default has occurred.” 42:12-24.
379	1/1/2007	Special Purpose Vehicles and Securitization, The Risks of Financial Institutions Chapter 12 by Gary B. Gorton and Nicholas S. Souleles	Hearsay; Improper Expert Opinion. This exhibit is a chapter from a book. The author was not disclosed as an expert by Plaintiffs, and the motion papers make no attempt to establish the author’s qualifications. The book is an out of court statement being offered for the truth of its contents.	The treatise cited at Handlin Ex. 379, “Special Purpose Vehicles and Securitization, The Risks of Financial Institutions, Chapter 12 by Gary B. Gorton and Nicholas S. Souleles,” is admissible under Rule 801(17) as a commercial publication relied upon by public finance professionals, and is also sufficiently reliable to fall under Rule 807’s residual exception. DB cannot assert a lack of reliability without demonstrating contrary authority.

Ex. No.	Date	Description	Objection	Rebuttal
380	8/30/2017	Deposition of Peter J. Collins in <i>Phoenix Light SF Ltd., et al. v. U.S. Bank Nat'l Ass'n, et al.</i> , No. 14-cv-10116 (S.D.N.Y.)	Hearsay. A party's deposition of its own witnesses is hearsay. This testimony is not subject to the exception in FRE 32 (a) or by FRE 804(b)(1) because there has been no showing that the witness is unavailable.	Deposition testimony under oath is "at least as good as an affidavit and should be usable whenever an affidavit would be permissible", even if conditions for use at trial are not satisfied, 8A Wright, Miller & Marcus, Federal Practice & Procedure: Civil § 2142, 164 (2d ed. 1994), so DB's hearsay objection is without merit. Further, a party can offer its own deponent's testimony on motion for summary judgment. <i>Patsy's Italian Rest., Inc. v. Banas</i> , 508 F. Supp. 2d 194, 200 n.3 (E.D.N.Y. 2007). Moreover, the testimony is not hearsay because it concerns a judicially recognized fact that federal law prohibits investors from gaining access to loan files. <i>See</i> 15 U.S.C. § 1601; <i>Willey v. J.P. Morgan Chase, N.A.</i> , 2009 WL 1938987, at *1 (S.D.N.Y. July 7, 2009). Finally, the testimony is admissible as reflecting the witness's knowledge under Rule 803(5).
381	Undated	ECF No. 189-3 in <i>Phoenix Light, et al. v. DBNTC, et al.</i> , Case No. 14-cv-10103 (the "PL Action")	Lacks foundation; lack of authentication.	This document is not cited in support of any evidentiary fact.
382	Undated	ECF No. 89-3 in <i>Commerzbank v. DBNTC, et. al.</i> , Case No. 15-cv-10031 (the "CB Action")	Lacks foundation; lack of authentication.	This document is not cited in support of any evidentiary fact.

Ex. No.	Date	Description	Objection	Rebuttal
383	12/5/2018	Deposition transcript of Timothy Vahen Avakian	Lacks foundation with respect to the following excerpt receipt of mortgage file documents: 120:8-14.	DB's foundation objection is without merit. The cited testimony is admissible as a party admission, and because Avakian testified to his personal knowledge of these facts and his understanding of the term "any material respect" with regard to delivery of the mortgage file documents. 120:8-14.
384	1/25/2018	Deposition transcript of David Co	Lacks foundation with respect to the following excerpts regarding loan servicing: 191:22-192:25; 196:12-20	DB's foundation objection is without merit. The cited testimony is admissible as a party admission, and because Co testified to his personal knowledge of the "standard of practice of prudent mortgage lenders in the respective states in which the mortgage properties are located" and whether the practice of robo-signing constituted a violation of such practices. 191:22-192:25; 196:12-20.
389	11/20/2017	Deposition transcript of Maria Jenny Pilapil	Lacks foundation with respect to the following excerpt regarding analytics/calculation of trigger event loss EODs: 106:11-107:16. Lacks foundation with respect to the following excerpts regarding [REDACTED] 42:7-43:6, 54:3-7.	DB's foundation objections are without merit. The cited testimony is admissible as a party admission. Pilapil testified to [REDACTED] 106:11-107:16. Pilapil further testified to [REDACTED] 42:12-15.
393	1/31/2018	Deposition transcript of Gary Vaughan	Lacks foundation with respect to the following excerpts regarding loan servicing: 194:16-20; 195:7-15	DB's foundation objection is without merit. The cited testimony is admissible as a party admission, and because Vaughan testified to [REDACTED] 194:16-20; 195:7-15. The relevant excerpts do not lack foundation.

Ex. No.	Date	Description	Objection	Rebuttal
634	12/12/2014	Letter to The Bank of New York Mellon Trust Company, National Association from David H. Wollmuth, on behalf of Blue Heron Funding II Ltd., Blue Heron Funding V Ltd., Blue Heron Funding VI Ltd., Blue Heron Funding IX Ltd., C-BASS CBO XIV Ltd., and C-BASS CBO XVII Ltd.	Hearsay. This is a letter [REDACTED] which constitute out of court statements offered for the truth of the matter asserted.	The letters cited to by Plaintiffs are not hearsay because they are not being used to prove the truth of the matter asserted. <i>See</i> Rule 801.
635	12/12/2014	Letter to Deutsche Bank Trust Company Americas from David H. Wollmuth, on behalf of Kleros Preferred Funding V PLC	Hearsay. This is a letter [REDACTED] which constitute out of court statements offered for the truth of the matter asserted	The letters cited to by Plaintiffs are not hearsay because they are not being used to prove the truth of the matter asserted. <i>See</i> Rule 801.
636	12/12/2014	Letter to Wells Fargo Bank, N.A. from David H. Wollmuth, on behalf of Blue Heron Funding VII Ltd. and Silver Elms CDO II PLC	Hearsay. This is a letter [REDACTED] which constitute out of court statements offered for the truth of the matter asserted	The letters cited to by Plaintiffs are not hearsay because they are not being used to prove the truth of the matter asserted. <i>See</i> Rule 801.

Ex. No.	Date	Description	Objection	Rebuttal
637	12/12/2014	Letter to Deutsche Bank Trust Company Americas from David H. Wollmuth, on behalf of Silver Elms CDO PLC	Hearsay. This is a letter [REDACTED] which constitute out of court statements offered for the truth of the matter asserted.	The letters cited to by Plaintiffs are not hearsay because they are not being used to prove the truth of the matter asserted. <i>See</i> Rule 801.
666	5/11/2009	Commerzbank AG Press Release	Hearsay. This is an out of court statement which is offered to prove that Commerzbank AG (“CB”) succeeded to all of the interests of Dresdner Bank AG (“Dresdner”) by way of merger as of May 2009, effected by way of universal succession under the German Transformation Act, with CB as the entity resulting from such merger.	Commerzbank’s contemporaneous press release is admissible as a business record under Rule 803(6). As a regulated entity, Commerzbank had a business duty to report accurate and timely information concerning mergers, and DB offers no evidence that the contemporaneous business report is unreliable.
667	1/19/2018	Deposition transcript of Vijay Radhakishun	Hearsay. A party’s deposition of its own witnesses is hearsay. This testimony is not subject to the exception in FRE 32 (a) or by FRE 804(b)(1) because there has been no showing that the witness is unavailable.	Deposition testimony under oath is “at least as good as an affidavit and should be usable whenever an affidavit would be permissible”, even if conditions for use at trial are not satisfied, 8A Wright, Miller & Marcus, Federal Practice & Procedure: Civil § 2142, 164 (2d ed. 1994), so DB’s hearsay objection is without merit. Further, a party can offer its own deponent’s testimony on motion for summary judgment. <i>Patsy’s Italian Rest., Inc. v. Banas</i> , 508 F. Supp. 2d 194, 200 n. 3 (E.D.N.Y. 2007).
668	3/9/2018	Rule 30(b)(6) deposition transcript of Commerzbank AG by Robert Boelstler	Hearsay. A party’s deposition of its own witnesses is hearsay. This testimony is not subject to the exception in FRE 32 (a) or by FRE 804(b)(1) because there has been no showing that the witness is unavailable.	Deposition testimony under oath is “at least as good as an affidavit and should be usable whenever an affidavit would be permissible”, even if conditions for use at trial are not satisfied, 8A Wright, Miller & Marcus, Federal Practice & Procedure: Civil § 2142, 164 (2d ed. 1994), so DB’s hearsay objection is without merit. Further, a party can offer its own deponent’s testimony on motion for summary judgment. <i>Patsy’s Italian Rest., Inc. v. Banas</i> , 508 F. Supp. 2d 194, 200 n. 3 (E.D.N.Y. 2007).

Ex. No.	Date	Description	Objection	Rebuttal
670	2008	Commerzbank AG Annual Report 2008	Hearsay. This is a press release containing out of court statements offered to prove that Eurohypo was the New York Branch of a wholly-owned subsidiary of CB.	Commerzbank's contemporaneous annual report is admissible as a business record under Rule 803(6). As a regulated entity, Commerzbank had a business duty to report accurate and timely information concerning its businesses, and DB offers no evidence that the contemporaneous business report is unreliable.
671	2008	New York State Banking Department 2008 Annual Report	Hearsay. This is an annual report containing out of court statements offered to prove that Eurohypo was the New York Branch of a wholly-owned subsidiary of CB.	NYS Banking Department's contemporaneous annual report is admissible as a business record under Rule 803(6) and a government record under Rule 803(8). As a regulated entity, NYS Banking Department had a business duty to report accurate and timely information concerning its businesses, and DB offers no evidence that the contemporaneous business and government report is unreliable.
706	1/19/2018	Deposition transcript of Ronaldo Reyes	Lacks foundation with respect to the following excerpt regarding Analytics and modeling: 337:10-338:1.	DB's foundation objection is without merit. The cited testimony is admissible as a party admission, and because Reyes testified to his personal knowledge of numerical triggers for Events of Default. Reyes explicitly states that the excerpted testimony is his "general understanding". 337:15.
746	12/18/2017	Deposition transcript of Katie Wannenmacher	Lacks foundation with respect to the following excerpts regarding Analytics and calculation of Trigger Event Loss EODs: 193:11- 195:6; 195:8-197:21.	DB's objection regarding lack of foundation is incorrect, as Ms. Wannenmacher had personal knowledge of the alleged fact, therefore rendering the excerpts admissible. Ms. Wannenmacher is testifying [REDACTED] [REDACTED] [REDACTED] 193:11-195:6; 195:8-197:21. The relevant excerpts do not lack foundation.

Ex. No.	Date	Description	Objection	Rebuttal
785	12/6/2010	DB's notice to AHMSI, as Servicer, of Chicago property violations	Hearsay. The document includes information from a spreadsheet prepared by the City of Chicago. All statements in those spreadsheets regarding alleged property code violations and/or outstanding fines/accounts receivable are inadmissible hearsay because they are out-of-court statements made by a non-party and Plaintiffs are offering those statements to prove the truth of the matter asserted (e.g., there was an uncured property code violation and/or an outstanding fine/bill). <i>Torres v. Gristede's Operating Corp.</i> , 628 F. Supp. 2d 447, 469–70 (S.D.N.Y. 2008) (hearsay evidence should not be considered on a motion for summary judgment).	Because the metadata produced by DB shows that the spreadsheet was authored by DB's own employees, the spreadsheet is admissible as a party admission. Even if authored by the City of Chicago, the contemporaneous spreadsheet would be admissible as a business record under Rule 803(6) and a government record under Rule 803(8), as statements of a public officer of facts observed pursuant to a legal duty to report. DB offers no evidence that the contemporaneous business and government report is unreliable. Furthermore, DB clearly adopted these documents by acting on them, sending them onward to the Servicers and demanding that the Servicers take action. <i>See In re GM LLC Ignition Switch Litig.</i> , 2015 WL 8578945, at *2 (S.D.N.Y. Dec. 9, 2015); <i>Penguin Books U.S.A., Inc. v. New Christian Church of Full Endeavor, Ltd.</i> , 262 F. Supp. 2d 251, 258 (S.D.N.Y. 2003).
786	1/25/2012	DB's notice to AHMSI, as Servicer, of Chicago property violations	Hearsay. The document includes information from a spreadsheet prepared by the City of Chicago. All statements in those spreadsheets regarding alleged property code violations and/or outstanding fines/accounts receivable are inadmissible hearsay because they are out-of-court statements made by a non-party and Plaintiffs are offering those statements to prove the truth of the matter asserted (e.g., there was an uncured property code violation and/or an outstanding fine/bill). <i>Torres v. Gristede's Operating Corp.</i> , 628 F. Supp. 2d 447, 469–70 (S.D.N.Y. 2008) (hearsay evidence should not be considered on a motion for summary judgment).	Because the metadata produced by DB shows that the spreadsheet was authored by DB's own employees, the spreadsheet is admissible as a party admission. Even if authored by the City of Chicago, the contemporaneous spreadsheet would be admissible as a business record under Rule 803(6) and a government record under Rule 803(8), as statements of a public officer of facts observed pursuant to a legal duty to report. DB offers no evidence that the contemporaneous business and government report is unreliable. Furthermore, DB clearly adopted these documents by acting on them, sending them onward to the Servicers and demanding that the Servicers take action. <i>See In re GM LLC Ignition Switch Litig.</i> , 2015 WL 8578945, at *2 (S.D.N.Y. Dec. 9, 2015); <i>Penguin Books U.S.A., Inc. v. New Christian Church of Full Endeavor, Ltd.</i> , 262 F. Supp. 2d 251, 258 (S.D.N.Y. 2003).

Ex. No.	Date	Description	Objection	Rebuttal
787	3/23/2011	DB's notice to Wells Fargo, as Servicer, of Chicago property violations, dated March 23, 2011	Hearsay. The document includes information from a spreadsheet prepared by the City of Chicago. All statements in those spreadsheets regarding alleged property code violations and/or outstanding fines/accounts receivable are inadmissible hearsay because they are out-of-court statements made by a non-party and Plaintiffs are offering those statements to prove the truth of the matter asserted (<i>e.g.</i> , there was an uncured property code violation and/or an outstanding fine/bill). <i>Torres v. Gristede's Operating Corp.</i> , 628 F. Supp. 2d 447, 469–70 (S.D.N.Y. 2008) (hearsay evidence should not be considered on a motion for summary judgment).	Because the metadata produced by DB shows that the spreadsheet was authored by DB's own employees, the spreadsheet is admissible as a party admission. Even if authored by the City of Chicago, the contemporaneous spreadsheet would be admissible as a business record under Rule 803(6) and a government record under Rule 803(8), as statements of a public officer of facts observed pursuant to a legal duty to report. DB offers no evidence that the contemporaneous business and government report is unreliable. Furthermore, DB clearly adopted these documents by acting on them, sending them onward to the Servicers and demanding that the Servicers take action. <i>See In re GM LLC Ignition Switch Litig.</i> , 2015 WL 8578945, at *2 (S.D.N.Y. Dec. 9, 2015); <i>Penguin Books U.S.A., Inc. v. New Christian Church of Full Endeavor, Ltd.</i> , 262 F. Supp. 2d 251, 258 (S.D.N.Y. 2003).
788	11/14/2011	DB's notice to Wells Fargo, as Servicer, of Chicago property violations	Hearsay. The document includes information from a spreadsheet prepared by the City of Chicago. All statements in those spreadsheets regarding alleged property code violations and/or outstanding fines/accounts receivable are inadmissible hearsay because they are out-of-court statements made by a non-party and Plaintiffs are offering those statements to prove the truth of the matter asserted (<i>e.g.</i> , there was an uncured property code violation and/or an outstanding fine/bill). <i>Torres v. Gristede's Operating Corp.</i> , 628 F. Supp. 2d 447, 469–70 (S.D.N.Y. 2008) (hearsay evidence should not be considered on a motion for summary judgment).	Because the metadata produced by DB shows that the spreadsheet was authored by DB's own employees, the spreadsheet is admissible as a party admission. Even if authored by the City of Chicago, the contemporaneous spreadsheet would be admissible as a business record under Rule 803(6) and a government record under Rule 803(8), as statements of a public officer of facts observed pursuant to a legal duty to report. DB offers no evidence that the contemporaneous business and government report is unreliable. Furthermore, DB clearly adopted these documents by acting on them, sending them onward to the Servicers and demanding that the Servicers take action. <i>See In re GM LLC Ignition Switch Litig.</i> , 2015 WL 8578945, at *2 (S.D.N.Y. Dec. 9, 2015); <i>Penguin Books U.S.A., Inc. v. New Christian Church of Full Endeavor, Ltd.</i> , 262 F. Supp. 2d 251, 258 (S.D.N.Y. 2003).

Ex. No.	Date	Description	Objection	Rebuttal
789	8/13/2010	Email correspondence between DB and the New York City Environmental Control Board, including the Environmental Control Board's notice to DB regarding property violations	Hearsay. The document includes information from a spreadsheet prepared by the City of New York. All statements in those spreadsheets regarding alleged property code violations and/or outstanding fines/accounts receivable are inadmissible hearsay because they are out-of-court statements made by a non-party and Plaintiffs are offering those statements to prove the truth of the matter asserted (<i>e.g.</i> , there was an uncured property code violation and/or an outstanding fine/bill). <i>Torres v. Gristede's Operating Corp.</i> , 628 F. Supp. 2d 447, 469–70 (S.D.N.Y. 2008) (hearsay evidence should not be considered on a motion for summary judgment).	Because the metadata produced by DB shows that the spreadsheet was authored by DB's own employees, the spreadsheet is admissible as a party admission. Even if authored by the City of New York, the contemporaneous spreadsheet would be admissible as a business record under Rule 803(6) and a government record under Rule 803(8), as statements of a public officer of facts observed pursuant to a legal duty to report. DB offers no evidence that the contemporaneous business and government report is unreliable. Furthermore, DB clearly adopted these documents by acting on them, sending them onward to the Servicers and demanding that the Servicers take action. <i>See In re GM LLC Ignition Switch Litig.</i> , 2015 WL 8578945, at *2 (S.D.N.Y. Dec. 9, 2015); <i>Penguin Books U.S.A., Inc. v. New Christian Church of Full Endeavor, Ltd.</i> , 262 F. Supp. 2d 251, 258 (S.D.N.Y. 2003).
790	8/13/2010	Spreadsheet attached to Exhibit 789 identifying the property violations identified by the New York City Environmental Control Board	Hearsay. The document includes information from a spreadsheet prepared by the City of New York. All statements in those spreadsheets regarding alleged property code violations and/or outstanding fines/accounts receivable are inadmissible hearsay because they are out-of-court statements made by a non-party and Plaintiffs are offering those statements to prove the truth of the matter asserted (<i>e.g.</i> , there was an uncured property code violation and/or an outstanding fine/bill). <i>Torres v. Gristede's Operating Corp.</i> , 628 F. Supp. 2d 447, 469–70 (S.D.N.Y. 2008) (hearsay evidence should not be considered on a motion for summary judgment).	Because the metadata produced by DB shows that the spreadsheet was authored by DB's own employees, the spreadsheet is admissible as a party admission. Even if authored by the City of New York, the contemporaneous spreadsheet would be admissible as a business record under Rule 803(6) and a government record under Rule 803(8), as statements of a public officer of facts observed pursuant to a legal duty to report. DB offers no evidence that the contemporaneous business and government report is unreliable. Furthermore, DB clearly adopted these documents by acting on them, sending them onward to the Servicers and demanding that the Servicers take action. <i>See In re GM LLC Ignition Switch Litig.</i> , 2015 WL 8578945, at *2 (S.D.N.Y. Dec. 9, 2015); <i>Penguin Books U.S.A., Inc. v. New Christian Church of Full Endeavor, Ltd.</i> , 262 F. Supp. 2d 251, 258 (S.D.N.Y. 2003).

Ex. No.	Date	Description	Objection	Rebuttal
791	10/25/2010	Email correspondence between DB and Ocwen including DB's email to Ocwen regarding code and rule violations asserted by the City of New York	Hearsay. The document includes information from a spreadsheet prepared by the City of New York. All statements in those spreadsheets regarding alleged property code violations and/or outstanding fines/accounts receivable are inadmissible hearsay because they are out-of-court statements made by a non-party and Plaintiffs are offering those statements to prove the truth of the matter asserted (<i>e.g.</i> , there was an uncured property code violation and/or an outstanding fine/bill). <i>Torres v. Gristede's Operating Corp.</i> , 628 F. Supp. 2d 447, 469–70 (S.D.N.Y. 2008) (hearsay evidence should not be considered on a motion for summary judgment).	Because the metadata produced by DB shows that the spreadsheet was authored by DB's own employees, the spreadsheet is admissible as a party admission. Even if authored by the City of New York, the contemporaneous spreadsheet would be admissible as a business record under Rule 803(6) and a government record under Rule 803(8), as statements of a public officer of facts observed pursuant to a legal duty to report. DB offers no evidence that the contemporaneous business and government report is unreliable. Furthermore, DB clearly adopted these documents by acting on them, sending them onward to the Servicers and demanding that the Servicers take action. <i>See In re GM LLC Ignition Switch Litig.</i> , 2015 WL 8578945, at *2 (S.D.N.Y. Dec. 9, 2015); <i>Penguin Books U.S.A., Inc. v. New Christian Church of Full Endeavor, Ltd.</i> , 262 F. Supp. 2d 251, 258 (S.D.N.Y. 2003).
792	8/24/2011	DB's email to Ocwen regarding code and rule violations asserted by the City of New York	Hearsay. The document includes information from a spreadsheet prepared by the City of New York. All statements in those spreadsheets regarding alleged property code violations and/or outstanding fines/accounts receivable are inadmissible hearsay because they are out-of-court statements made by a non-party and Plaintiffs are offering those statements to prove the truth of the matter asserted (<i>e.g.</i> , there was an uncured property code violation and/or an outstanding fine/bill). <i>Torres v. Gristede's Operating Corp.</i> , 628 F. Supp. 2d 447, 469–70 (S.D.N.Y. 2008) (hearsay evidence should not be considered on a motion for summary judgment).	Because the metadata produced by DB shows that the spreadsheet was authored by DB's own employees, the spreadsheet is admissible as a party admission. Even if authored by the City of New York, the contemporaneous spreadsheet would be admissible as a business record under Rule 803(6) and a government record under Rule 803(8), as statements of a public officer of facts observed pursuant to a legal duty to report. DB offers no evidence that the contemporaneous business and government report is unreliable. Furthermore, DB clearly adopted these documents by acting on them, sending them onward to the Servicers and demanding that the Servicers take action. <i>See In re GM LLC Ignition Switch Litig.</i> , 2015 WL 8578945, at *2 (S.D.N.Y. Dec. 9, 2015); <i>Penguin Books U.S.A., Inc. v. New Christian Church of Full Endeavor, Ltd.</i> , 262 F. Supp. 2d 251, 258 (S.D.N.Y. 2003).

Ex. No.	Date	Description	Objection	Rebuttal
793	10/25/2010	DB's email to Wells Fargo regarding code and rule violations asserted by the City of New York	Hearsay. The document includes information from a spreadsheet prepared by the City of New York. All statements in those spreadsheets regarding alleged property code violations and/or outstanding fines/accounts receivable are inadmissible hearsay because they are out-of-court statements made by a non-party and Plaintiffs are offering those statements to prove the truth of the matter asserted (<i>e.g.</i> , there was an uncured property code violation and/or an outstanding fine/bill). <i>Torres v. Gristede's Operating Corp.</i> , 628 F. Supp. 2d 447, 469–70 (S.D.N.Y. 2008) (hearsay evidence should not be considered on a motion for summary judgment).	Because the metadata produced by DB shows that the spreadsheet was authored by DB's own employees, the spreadsheet is admissible as a party admission. Even if authored by the City of New York, the contemporaneous spreadsheet would be admissible as a business record under Rule 803(6) and a government record under Rule 803(8), as statements of a public officer of facts observed pursuant to a legal duty to report. DB offers no evidence that the contemporaneous business and government report is unreliable. Furthermore, DB clearly adopted these documents by acting on them, sending them onward to the Servicers and demanding that the Servicers take action. <i>See In re GM LLC Ignition Switch Litig.</i> , 2015 WL 8578945, at *2 (S.D.N.Y. Dec. 9, 2015); <i>Penguin Books U.S.A., Inc. v. New Christian Church of Full Endeavor, Ltd.</i> , 262 F. Supp. 2d 251, 258 (S.D.N.Y. 2003).
794	7/29/2011	DB's email to Wells Fargo regarding code and rule violations asserted by the City of New York	Hearsay. The document includes information from a spreadsheet prepared by the City of New York. All statements in those spreadsheets regarding alleged property code violations and/or outstanding fines/accounts receivable are inadmissible hearsay because they are out-of-court statements made by a non-party and Plaintiffs are offering those statements to prove the truth of the matter asserted (<i>e.g.</i> , there was an uncured property code violation and/or an outstanding fine/bill). <i>Torres v. Gristede's Operating Corp.</i> , 628 F. Supp. 2d 447, 469–70 (S.D.N.Y. 2008) (hearsay evidence should not be considered on a motion for summary judgment).	Because the metadata produced by DB shows that the spreadsheet was authored by DB's own employees, the spreadsheet is admissible as a party admission. Even if authored by the City of New York, the contemporaneous spreadsheet would be admissible as a business record under Rule 803(6) and a government record under Rule 803(8), as statements of a public officer of facts observed pursuant to a legal duty to report. DB offers no evidence that the contemporaneous business and government report is unreliable. Furthermore, DB clearly adopted these documents by acting on them, sending them onward to the Servicers and demanding that the Servicers take action. <i>See In re GM LLC Ignition Switch Litig.</i> , 2015 WL 8578945, at *2 (S.D.N.Y. Dec. 9, 2015); <i>Penguin Books U.S.A., Inc. v. New Christian Church of Full Endeavor, Ltd.</i> , 262 F. Supp. 2d 251, 258 (S.D.N.Y. 2003).

Ex. No.	Date	Description	Objection	Rebuttal
795	10/25/2010	DB's email to Impac regarding code and rule violations asserted by the City of New York	Hearsay. The document includes information from a spreadsheet prepared by the City of New York. All statements in those spreadsheets regarding alleged property code violations and/or outstanding fines/accounts receivable are inadmissible hearsay because they are out-of-court statements made by a non-party and Plaintiffs are offering those statements to prove the truth of the matter asserted (<i>e.g.</i> , there was an uncured property code violation and/or an outstanding fine/bill). <i>Torres v. Gristede's Operating Corp.</i> , 628 F. Supp. 2d 447, 469–70 (S.D.N.Y. 2008) (hearsay evidence should not be considered on a motion for summary judgment).	Because the metadata produced by DB shows that the spreadsheet was authored by DB's own employees, the spreadsheet is admissible as a party admission. Even if authored by the City of New York, the contemporaneous spreadsheet would be admissible as a business record under Rule 803(6) and a government record under Rule 803(8), as statements of a public officer of facts observed pursuant to a legal duty to report. DB offers no evidence that the contemporaneous business and government report is unreliable. Furthermore, DB clearly adopted these documents by acting on them, sending them onward to the Servicers and demanding that the Servicers take action. <i>See In re GM LLC Ignition Switch Litig.</i> , 2015 WL 8578945, at *2 (S.D.N.Y. Dec. 9, 2015); <i>Penguin Books U.S.A., Inc. v. New Christian Church of Full Endeavor, Ltd.</i> , 262 F. Supp. 2d 251, 258 (S.D.N.Y. 2003).
796	7/15/2011	DB's email to Impac regarding code and rule violations asserted by the City of New York	Hearsay. The document includes information from a spreadsheet prepared by the City of New York. All statements in those spreadsheets regarding alleged property code violations and/or outstanding fines/accounts receivable are inadmissible hearsay because they are out-of-court statements made by a non-party and Plaintiffs are offering those statements to prove the truth of the matter asserted (<i>e.g.</i> , there was an uncured property code violation and/or an outstanding fine/bill). <i>Torres v. Gristede's Operating Corp.</i> , 628 F. Supp. 2d 447, 469–70 (S.D.N.Y. 2008) (hearsay evidence should not be considered on a motion for summary judgment).	Because the metadata produced by DB shows that the spreadsheet was authored by DB's own employees, the spreadsheet is admissible as a party admission. Even if authored by the City of New York, the contemporaneous spreadsheet would be admissible as a business record under Rule 803(6) and a government record under Rule 803(8), as statements of a public officer of facts observed pursuant to a legal duty to report. DB offers no evidence that the contemporaneous business and government report is unreliable. Furthermore, DB clearly adopted these documents by acting on them, sending them onward to the Servicers and demanding that the Servicers take action. <i>See In re GM LLC Ignition Switch Litig.</i> , 2015 WL 8578945, at *2 (S.D.N.Y. Dec. 9, 2015); <i>Penguin Books U.S.A., Inc. v. New Christian Church of Full Endeavor, Ltd.</i> , 262 F. Supp. 2d 251, 258 (S.D.N.Y. 2003).

Ex. No.	Date	Description	Objection	Rebuttal
797	10/25/2010	Email correspondence including DB's email to BAC regarding code and rule violations asserted by the City of New York	Hearsay. The document includes information from a spreadsheet prepared by the City of New York. All statements in those spreadsheets regarding alleged property code violations and/or outstanding fines/accounts receivable are inadmissible hearsay because they are out-of-court statements made by a non-party and Plaintiffs are offering those statements to prove the truth of the matter asserted (<i>e.g.</i> , there was an uncured property code violation and/or an outstanding fine/bill). <i>Torres v. Gristede's Operating Corp.</i> , 628 F. Supp. 2d 447, 469–70 (S.D.N.Y. 2008) (hearsay evidence should not be considered on a motion for summary judgment).	Because the metadata produced by DB shows that the spreadsheet was authored by DB's own employees, the spreadsheet is admissible as a party admission. Even if authored by the City of New York, the contemporaneous spreadsheet would be admissible as a business record under Rule 803(6) and a government record under Rule 803(8), as statements of a public officer of facts observed pursuant to a legal duty to report. DB offers no evidence that the contemporaneous business and government report is unreliable. Furthermore, DB clearly adopted these documents by acting on them, sending them onward to the Servicers and demanding that the Servicers take action. <i>See In re GM LLC Ignition Switch Litig.</i> , 2015 WL 8578945, at *2 (S.D.N.Y. Dec. 9, 2015); <i>Penguin Books U.S.A., Inc. v. New Christian Church of Full Endeavor, Ltd.</i> , 262 F. Supp. 2d 251, 258 (S.D.N.Y. 2003).
798	7/15/2011	DB's email to BAC regarding code and rule violations asserted by the City of New York	Hearsay. The document includes information from a spreadsheet prepared by the City of New York. All statements in those spreadsheets regarding alleged property code violations and/or outstanding fines/accounts receivable are inadmissible hearsay because they are out-of-court statements made by a non-party and Plaintiffs are offering those statements to prove the truth of the matter asserted (<i>e.g.</i> , there was an uncured property code violation and/or an outstanding fine/bill). <i>Torres v. Gristede's Operating Corp.</i> , 628 F. Supp. 2d 447, 469–70 (S.D.N.Y. 2008) (hearsay evidence should not be considered on a motion for summary judgment).	Because the metadata produced by DB shows that the spreadsheet was authored by DB's own employees, the spreadsheet is admissible as a party admission. Even if authored by the City of New York, the contemporaneous spreadsheet would be admissible as a business record under Rule 803(6) and a government record under Rule 803(8), as statements of a public officer of facts observed pursuant to a legal duty to report. DB offers no evidence that the contemporaneous business and government report is unreliable. Furthermore, DB clearly adopted these documents by acting on them, sending them onward to the Servicers and demanding that the Servicers take action. <i>See In re GM LLC Ignition Switch Litig.</i> , 2015 WL 8578945, at *2 (S.D.N.Y. Dec. 9, 2015); <i>Penguin Books U.S.A., Inc. v. New Christian Church of Full Endeavor, Ltd.</i> , 262 F. Supp. 2d 251, 258 (S.D.N.Y. 2003).

Ex. No.	Date	Description	Objection	Rebuttal
799	12/30/2010	DB's email to BAC regarding code and rule violations asserted by the City of New York	Hearsay. The document includes information from a spreadsheet prepared by the City of New York. All statements in those spreadsheets regarding alleged property code violations and/or outstanding fines/accounts receivable are inadmissible hearsay because they are out-of-court statements made by a non-party and Plaintiffs are offering those statements to prove the truth of the matter asserted (e.g., there was an uncured property code violation and/or an outstanding fine/bill). <i>Torres v. Gristede's Operating Corp.</i> , 628 F. Supp. 2d 447, 469–70 (S.D.N.Y. 2008) (hearsay evidence should not be considered on a motion for summary judgment).	Because the metadata produced by DB shows that the spreadsheet was authored by DB's own employees, the spreadsheet is admissible as a party admission. Even if authored by the City of New York, the contemporaneous spreadsheet would be admissible as a business record under Rule 803(6) and a government record under Rule 803(8), as statements of a public officer of facts observed pursuant to a legal duty to report. DB offers no evidence that the contemporaneous business and government report is unreliable. Furthermore, DB clearly adopted these documents by acting on them, sending them onward to the Servicers and demanding that the Servicers take action. <i>See In re GM LLC Ignition Switch Litig.</i> , 2015 WL 8578945, at *2 (S.D.N.Y. Dec. 9, 2015); <i>Penguin Books U.S.A., Inc. v. New Christian Church of Full Endeavor, Ltd.</i> , 262 F. Supp. 2d 251, 258 (S.D.N.Y. 2003).
800	3/17/2011	DB's email correspondence with Ocwen, including DB's email to Ocwen regarding code and rule violations asserted by the City of New York	Hearsay. The document includes information from a spreadsheet prepared by the City of New York. All statements in those spreadsheets regarding alleged property code violations and/or outstanding fines/accounts receivable are inadmissible hearsay because they are out-of-court statements made by a non-party and Plaintiffs are offering those statements to prove the truth of the matter asserted (e.g., there was an uncured property code violation and/or an outstanding fine/bill). <i>Torres v. Gristede's Operating Corp.</i> , 628 F. Supp. 2d 447, 469–70 (S.D.N.Y. 2008) (hearsay evidence should not be considered on a motion for summary judgment).	Because the metadata produced by DB shows that the spreadsheet was authored by DB's own employees, the spreadsheet is admissible as a party admission. Even if authored by the City of New York, the contemporaneous spreadsheet would be admissible as a business record under Rule 803(6) and a government record under Rule 803(8), as statements of a public officer of facts observed pursuant to a legal duty to report. DB offers no evidence that the contemporaneous business and government report is unreliable. Furthermore, DB clearly adopted these documents by acting on them, sending them onward to the Servicers and demanding that the Servicers take action. <i>See In re GM LLC Ignition Switch Litig.</i> , 2015 WL 8578945, at *2 (S.D.N.Y. Dec. 9, 2015); <i>Penguin Books U.S.A., Inc. v. New Christian Church of Full Endeavor, Ltd.</i> , 262 F. Supp. 2d 251, 258 (S.D.N.Y. 2003).

Ex. No.	Date	Description	Objection	Rebuttal
801	10/25/2010	DB's email to AHMSI regarding code and rule violations asserted by the City of New York	Hearsay. The document includes information from a spreadsheet prepared by the City of New York. All statements in those spreadsheets regarding alleged property code violations and/or outstanding fines/accounts receivable are inadmissible hearsay because they are out-of-court statements made by a non-party and Plaintiffs are offering those statements to prove the truth of the matter asserted (<i>e.g.</i> , there was an uncured property code violation and/or an outstanding fine/bill). <i>Torres v. Gristede's Operating Corp.</i> , 628 F. Supp. 2d 447, 469–70 (S.D.N.Y. 2008) (hearsay evidence should not be considered on a motion for summary judgment).	Because the metadata produced by DB shows that the spreadsheet was authored by DB's own employees, the spreadsheet is admissible as a party admission. Even if authored by the City of New York, the contemporaneous spreadsheet would be admissible as a business record under Rule 803(6) and a government record under Rule 803(8), as statements of a public officer of facts observed pursuant to a legal duty to report. DB offers no evidence that the contemporaneous business and government report is unreliable. Furthermore, DB clearly adopted these documents by acting on them, sending them onward to the Servicers and demanding that the Servicers take action. <i>See In re GM LLC Ignition Switch Litig.</i> , 2015 WL 8578945, at *2 (S.D.N.Y. Dec. 9, 2015); <i>Penguin Books U.S.A., Inc. v. New Christian Church of Full Endeavor, Ltd.</i> , 262 F. Supp. 2d 251, 258 (S.D.N.Y. 2003).
802	3/16/2011	DB's email to AHMSI regarding code and rule violations asserted by the City of New York	Hearsay. The document includes information from a spreadsheet prepared by the City of New York. All statements in those spreadsheets regarding alleged property code violations and/or outstanding fines/accounts receivable are inadmissible hearsay because they are out-of-court statements made by a non-party and Plaintiffs are offering those statements to prove the truth of the matter asserted (<i>e.g.</i> , there was an uncured property code violation and/or an outstanding fine/bill). <i>Torres v. Gristede's Operating Corp.</i> , 628 F. Supp. 2d 447, 469–70 (S.D.N.Y. 2008) (hearsay evidence should not be considered on a motion for summary judgment).	Because the metadata produced by DB shows that the spreadsheet was authored by DB's own employees, the spreadsheet is admissible as a party admission. Even if authored by the City of New York, the contemporaneous spreadsheet would be admissible as a business record under Rule 803(6) and a government record under Rule 803(8), as statements of a public officer of facts observed pursuant to a legal duty to report. DB offers no evidence that the contemporaneous business and government report is unreliable. Furthermore, DB clearly adopted these documents by acting on them, sending them onward to the Servicers and demanding that the Servicers take action. <i>See In re GM LLC Ignition Switch Litig.</i> , 2015 WL 8578945, at *2 (S.D.N.Y. Dec. 9, 2015); <i>Penguin Books U.S.A., Inc. v. New Christian Church of Full Endeavor, Ltd.</i> , 262 F. Supp. 2d 251, 258 (S.D.N.Y. 2003).

Ex. No.	Date	Description	Objection	Rebuttal
803	3/14/2013	Plaintiffs' Deposition Exhibit 498 (email correspondence regarding code and rule violations asserted by the City of New York)	Hearsay. The document includes information from a spreadsheet prepared by the City of New York. All statements in those spreadsheets regarding alleged property code violations and/or outstanding fines/accounts receivable are inadmissible hearsay because they are out-of-court statements made by a non-party and Plaintiffs are offering those statements to prove the truth of the matter asserted (<i>e.g.</i> , there was an uncured property code violation and/or an outstanding fine/bill). <i>Torres v. Gristede's Operating Corp.</i> , 628 F. Supp. 2d 447, 469–70 (S.D.N.Y. 2008) (hearsay evidence should not be considered on a motion for summary judgment).	Because the metadata produced by DB shows that the spreadsheet was authored by DB's own employees, the spreadsheet is admissible as a party admission. Even if authored by the City of New York, the contemporaneous spreadsheet would be admissible as a business record under Rule 803(6) and a government record under Rule 803(8), as statements of a public officer of facts observed pursuant to a legal duty to report. DB offers no evidence that the contemporaneous business and government report is unreliable. Furthermore, DB clearly adopted these documents by acting on them, sending them onward to the Servicers and demanding that the Servicers take action. <i>See In re GM LLC Ignition Switch Litig.</i> , 2015 WL 8578945, at *2 (S.D.N.Y. Dec. 9, 2015); <i>Penguin Books U.S.A., Inc. v. New Christian Church of Full Endeavor, Ltd.</i> , 262 F. Supp. 2d 251, 258 (S.D.N.Y. 2003).
804	2/25/2010	Email correspondence including an email from a Milwaukee official to DB regarding property violations	Hearsay. The document includes information from a spreadsheet prepared by the City of Milwaukee. All statements in those spreadsheets regarding alleged property code violations and/or outstanding fines/accounts receivable are inadmissible hearsay because they are out-of-court statements made by a non-party and Plaintiffs are offering those statements to prove the truth of the matter asserted (<i>e.g.</i> , there was an uncured property code violation and/or an outstanding fine/bill). <i>Torres v. Gristede's Operating Corp.</i> , 628 F. Supp. 2d 447, 469–70 (S.D.N.Y. 2008) (hearsay evidence should not be considered on a motion for summary judgment).	Because the metadata produced by DB shows that the spreadsheet was authored by DB's own employees, the spreadsheet is admissible as a party admission. Even if authored by the City of Milwaukee, the contemporaneous spreadsheet would be admissible as a business record under Rule 803(6) and a government record under Rule 803(8), as statements of a public officer of facts observed pursuant to a legal duty to report. DB offers no evidence that the contemporaneous business and government report is unreliable. Furthermore, DB clearly adopted these documents by acting on them, sending them onward to the Servicers and demanding that the Servicers take action. <i>See In re GM LLC Ignition Switch Litig.</i> , 2015 WL 8578945, at *2 (S.D.N.Y. Dec. 9, 2015); <i>Penguin Books U.S.A., Inc. v. New Christian Church of Full Endeavor, Ltd.</i> , 262 F. Supp. 2d 251, 258 (S.D.N.Y. 2003).

Ex. No.	Date	Description	Objection	Rebuttal
805	2/25/2010	Spreadsheet containing Milwaukee property violations	Hearsay. The document includes information from a spreadsheet prepared by the City of Milwaukee. All statements in those spreadsheets regarding alleged property code violations and/or outstanding fines/accounts receivable are inadmissible hearsay because they are out-of-court statements made by a non-party and Plaintiffs are offering those statements to prove the truth of the matter asserted (<i>e.g.</i> , there was an uncured property code violation and/or an outstanding fine/bill). <i>Torres v. Gristede's Operating Corp.</i> , 628 F. Supp. 2d 447, 469–70 (S.D.N.Y. 2008) (hearsay evidence should not be considered on a motion for summary judgment).	Because the metadata produced by DB shows that the spreadsheet was authored by DB's own employees, the spreadsheet is admissible as a party admission. Even if authored by the City of Milwaukee, the contemporaneous spreadsheet would be admissible as a business record under Rule 803(6) and a government record under Rule 803(8), as statements of a public officer of facts observed pursuant to a legal duty to report. DB offers no evidence that the contemporaneous business and government report is unreliable. Furthermore, DB clearly adopted these documents by acting on them, sending them onward to the Servicers and demanding that the Servicers take action. <i>See In re GM LLC Ignition Switch Litig.</i> , 2015 WL 8578945, at *2 (S.D.N.Y. Dec. 9, 2015); <i>Penguin Books U.S.A., Inc. v. New Christian Church of Full Endeavor, Ltd.</i> , 262 F. Supp. 2d 251, 258 (S.D.N.Y. 2003).
806	4/7/2010	DB email responding to Milwaukee's assertion of property violations, attaching Servicer response spreadsheet	Hearsay. The document includes information from a spreadsheet prepared by the City of Milwaukee. All statements in those spreadsheets regarding alleged property code violations and/or outstanding fines/accounts receivable are inadmissible hearsay because they are out-of-court statements made by a non-party and Plaintiffs are offering those statements to prove the truth of the matter asserted (<i>e.g.</i> , there was an uncured property code violation and/or an outstanding fine/bill). <i>Torres v. Gristede's Operating Corp.</i> , 628 F. Supp. 2d 447, 469–70 (S.D.N.Y. 2008) (hearsay evidence should not be considered on a motion for summary judgment).	Because the metadata produced by DB shows that the spreadsheet was authored by DB's own employees, the spreadsheet is admissible as a party admission. Even if authored by the City of Milwaukee, the contemporaneous spreadsheet would be admissible as a business record under Rule 803(6) and a government record under Rule 803(8), as statements of a public officer of facts observed pursuant to a legal duty to report. DB offers no evidence that the contemporaneous business and government report is unreliable. Furthermore, DB clearly adopted these documents by acting on them, sending them onward to the Servicers and demanding that the Servicers take action. <i>See In re GM LLC Ignition Switch Litig.</i> , 2015 WL 8578945, at *2 (S.D.N.Y. Dec. 9, 2015); <i>Penguin Books U.S.A., Inc. v. New Christian Church of Full Endeavor, Ltd.</i> , 262 F. Supp. 2d 251, 258 (S.D.N.Y. 2003).

Ex. No.	Date	Description	Objection	Rebuttal
807	10/5/2010	DB email correspondence with Litton Loan Servicing regarding Milwaukee's assertion of property violations	Hearsay. The document includes information from a spreadsheet prepared by the City of Milwaukee. All statements in those spreadsheets regarding alleged property code violations and/or outstanding fines/accounts receivable are inadmissible hearsay because they are out-of-court statements made by a non-party and Plaintiffs are offering those statements to prove the truth of the matter asserted (<i>e.g.</i> , there was an uncured property code violation and/or an outstanding fine/bill). <i>Torres v. Gristede's Operating Corp.</i> , 628 F. Supp. 2d 447, 469–70 (S.D.N.Y. 2008) (hearsay evidence should not be considered on a motion for summary judgment).	Because the metadata produced by DB shows that the spreadsheet was authored by DB's own employees, the spreadsheet is admissible as a party admission. Even if authored by the City of Milwaukee, the contemporaneous spreadsheet would be admissible as a business record under Rule 803(6) and a government record under Rule 803(8), as statements of a public officer of facts observed pursuant to a legal duty to report. DB offers no evidence that the contemporaneous business and government report is unreliable. Furthermore, DB clearly adopted these documents by acting on them, sending them onward to the Servicers and demanding that the Servicers take action. <i>See In re GM LLC Ignition Switch Litig.</i> , 2015 WL 8578945, at *2 (S.D.N.Y. Dec. 9, 2015); <i>Penguin Books U.S.A., Inc. v. New Christian Church of Full Endeavor, Ltd.</i> , 262 F. Supp. 2d 251, 258 (S.D.N.Y. 2003).
808	9/20/2010	DB email correspondence with AHMSI regarding Milwaukee's assertion of property violations	Hearsay. The document includes information from a spreadsheet prepared by the City of Milwaukee. All statements in those spreadsheets regarding alleged property code violations and/or outstanding fines/accounts receivable are inadmissible hearsay because they are out-of-court statements made by a non-party and Plaintiffs are offering those statements to prove the truth of the matter asserted (<i>e.g.</i> , there was an uncured property code violation and/or an outstanding fine/bill). <i>Torres v. Gristede's Operating Corp.</i> , 628 F. Supp. 2d 447, 469–70 (S.D.N.Y. 2008) (hearsay evidence should not be considered on a motion for summary judgment).	Because the metadata produced by DB shows that the spreadsheet was authored by DB's own employees, the spreadsheet is admissible as a party admission. Even if authored by the City of Milwaukee, the contemporaneous spreadsheet would be admissible as a business record under Rule 803(6) and a government record under Rule 803(8), as statements of a public officer of facts observed pursuant to a legal duty to report. DB offers no evidence that the contemporaneous business and government report is unreliable. Furthermore, DB clearly adopted these documents by acting on them, sending them onward to the Servicers and demanding that the Servicers take action. <i>See In re GM LLC Ignition Switch Litig.</i> , 2015 WL 8578945, at *2 (S.D.N.Y. Dec. 9, 2015); <i>Penguin Books U.S.A., Inc. v. New Christian Church of Full Endeavor, Ltd.</i> , 262 F. Supp. 2d 251, 258 (S.D.N.Y. 2003).

Ex. No.	Date	Description	Objection	Rebuttal
809	5/4/2011	Complaint filed in <i>The People of the State of California and the City of Los Angeles v. Deutsche Bank National Trust Company, Deutsche Bank Trust Company Americas, et al.</i> , Case. No. BC460878 (Super. Ct. Cal.)	Hearsay. These documents are inadmissible to prove that there were any uncured property code violations. <i>See Lipsky v. Commonwealth United Corp.</i> , 551 F.2d 887, 893 (2d Cir. 1976) (holding that allegations in an complaint and resulting consent judgment were properly stricken because they were not adjudicated on the merits, and thus could not be used as evidence of prior wrongdoing in subsequent litigation, or to prove underlying facts of liability); <i>In re Blech Sec. Litig.</i> , No. 94 CIV. 7696 (RWS), 2003 WL 1610775, at *11 (S.D.N.Y. Mar. 26, 2003) (statements in complaints are “inadmissible hearsay, excluded by Rules 801, 802, and 803 of the Federal Rules of Evidence”).	DB’s hearsay objection is meritless. DB misstates Plaintiffs’ assertions regarding this document. Pltfs.SUF ¶ 528 states a fact that a complaint was filed by the City of Los Angeles, which shows notice of government allegations of uncured property code violations. This does not constitute hearsay under Rule 801.
810	11/25/2013	Verified Petition of Deutsche Bank National Trust Company, as Trustee for the Deutsche Bank National Trust Company, as Trustee for IXIS Real Estate Capital Trust 2006-HE2 Mortgage Pass-Through Certificates, Series 2006-HE2 for Instructions Regarding the Internal Affairs of the Trust,” filed in <i>In re IXIS Real Estate Capital Trust 2006-HE2 Mortgage Pass-Through Certificates, Series 2006-HE2</i>	Hearsay. These documents are inadmissible to prove that there were any uncured property code violations. <i>See Lipsky v. Commonwealth United Corp.</i> , 551 F.2d 887,893 (2d Cir. 1976) (holding that allegations in an complaint and resulting consent judgment were properly stricken because they were not adjudicated on the merits, and thus could not be used as evidence of prior wrongdoing in subsequent litigation, or to prove underlying facts of liability); <i>In re Blech Sec.Litig.</i> , No. 94 CIV. 7696 (RWS), 2003 WL 1610775, at *11 (S.D.N.Y. Mar. 26, 2003) (statements in complaints are “inadmissible hearsay, excluded by Rules 801, 802, and 803 of the Federal Rules of Evidence”); <i>Edelhertz v. City of Middletown</i> , 943 F. Supp. 2d 388, 391 n.2 (S.D.N.Y. 2012), <i>aff’d sub nom. Edelhertz v. City of Middletown, New York</i> , 714 F.3d 749 (2d Cir. 2013) (“allegations made in	DB’s hearsay objection is meritless. DB misstates Plaintiffs’ assertions regarding this document. Pltfs.SUF ¶ 529 states the fact that DB entered into an agreement titled Trustee-Servicer Property Agreements. This does not constitute hearsay under Rule 801.

Ex. No.	Date	Description	Objection	Rebuttal
			[a] Complaint—a document that is evidence of nothing more than the existence of an accusation—are inadmissible hearsay, pursuant to Rules 801, 802, and 803 of the Federal Rules of Evidence.”).	
852	1971	“Article Six: the Trustee” excerpt from American Bar Foundation, Commentaries on Model Debenture Indenture Provisions, 1965: Model Debenture Indenture Provisions, All registered Issues, 1967, and Certain Negotiable Provisions Which May be Included in a Particular Incorporating Indenture (1971)	Hearsay; Improper Expert Opinion. This exhibit is a chapter from a book. The author was not disclosed as an expert by Plaintiffs, and the motion papers make no attempt to establish the author’s qualifications. The book is an out of court statement being offered for the truth of its contents.	This document is admissible for non-hearsay purposes. It falls under Rule 803(16) as “a statement in a document that was prepared before January 1, 1998, and whose authenticity is established.” <i>See</i> Rule 803(16). The authenticity of this document has been approved by this Court and the Second Circuit. <i>See McMahan & Co. v. Warehouse Entm’t, Inc.</i> , 65 F.3d 1044, 1050 (2d Cir. 1995); <i>Metro. Life Ins. Co. v. RJR Nabisco, Inc.</i> , 906 F.2d 884, 893 (2d Cir. 1990); <i>Morgan Stanley & Co. v. Archer Daniels Midland Co.</i> , 570 F. Supp. 1529, 1535 (S.D.N.Y. 1983); <i>Semi-Tech Litig., LLC v. Bankers Tr. Co.</i> , 353 F. Supp. 2d 460, 463-64 n.13 (S.D.N.Y. 2005), <i>aff’d sub nom. In re Bankers Tr. Co.</i> , 450 F.3d 121 (2d Cir. 2006).

Dated: New York, New York

February 15, 2019

By: /s/ Jay S. Handlin

Jay S. Handlin